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U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Therma-Tru Corp.

Serial No. 75/216,795

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L.P.A. for Therma-Tru Corp.

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Before Seeherman, Hanak and Rogers, Administrative
Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Therma-Tru Corp. has appealed from the refusal of the
Trademark Examining Attorney to register CAMBRIDGE as a
trademark for "door lites, namely glass or plastic inserts
for doors."¹ Registration has been refused pursuant to

¹ Application Serial No. 75/216,795, filed December 23, 1996.
The application was filed based on an asserted bona fide
intention to use the mark in commerce. On April 23, 1997
applicant filed an amendment to allege use, claiming first use
and first use in commerce on March 26, 1997.

Section 2(e)(3) of the Trademark Act, 15 U.S.C. 1052(e)(3), on the ground that applicant's mark is geographically deceptively misdescriptive of applicant's goods.

The appeal has been fully briefed, but an oral hearing was not requested.

A mark is geographically deceptively misdescriptive under Section 2(e)(3) if 1) it has as its primary significance a generally known geographic place, and 2) it identifies products that purchasers are likely to believe mistakenly are connected with that location, i.e., that the public would make a goods/place association. **In re Wada**, 194 F.3d 1297, 52 USPQ2d 1539 (Fed. Cir. 1999). It is the Examining Attorney's position, as set forth in his brief, that consumers will assume that applicant's identified goods come from the cities of Cambridge, Massachusetts or Cambridge, Ohio, i.e., will make a goods/place association, because glass is manufactured in those cities. Further, because applicant's goods do not come from either of these places, (applicant being located in Maumee, Ohio), the Examining Attorney maintains that the mark is geographically deceptively misdescriptive.

Applicant has explained that its goods, door lites, are framed glass or plastic panels for insertion in doors

or next to doors in side frames. They provide light transmission and security viewing. Response filed January 30, 1998. It has further stated, in its appeal brief, that door lites are relatively narrow windows which are positioned adjacent to an entry door. The door lites are sometimes sold separately as a frame and enclosed panel, while at other times are sold as a portion of an entire door assembly. brief, pp. 3-4.

Applicant argues that, because its product is a door lite, it is not sufficient to establish a goods/place association between glass and either Cambridge to show that its mark is primarily geographically deceptively misdescriptive. We disagree. Applicant's goods are identified, in part, as "glass inserts for doors." Although these door lites may include a frame, glass is clearly a primary component. Thus, if consumers make a goods/place association between glass items and either Cambridge, they will make such an association between door lites which are inserts made of glass, and either Cambridge.

Because the Examining Attorney has asserted that consumers will make an association between applicant's goods and the cities of Cambridge, Massachusetts and Cambridge, Ohio, we will consider these claims separately.

In support of his position that the mark is geographically deceptively misdescriptive of Cambridge, Massachusetts, the Examining Attorney has made of record a listing from Webster's New Geographical Dictionary, © 1988, which includes the following description of Cambridge, Massachusetts:

NE Massachusetts, 3 m. W of Boston;
pop. (1980c) 95,322; educational
center; also manufacturing and
commercial center; electrical
machinery, scientific instruments,
inks, **glass**, rubber goods, wire cables,
paper boxes; printing and publishing;
Harvard Univ. (1636), Radcliffe Coll.
(1879, affiliated with Harvard Univ.),
Massachusetts Institute of Technology
(1861), Lesley Coll. (1909).
(emphasis added; section on history
omitted)

The Examining Attorney has also submitted an article about redevelopment in East Cambridge, Massachusetts which makes the following reference:

The evolution of the East Cambridge riverfront actually began about 13 years ago, when the city of Cambridge decided that something needed to be done to resuscitate the East Cambridge neighborhood. A major industrial center for the manufacture of such goods as furniture, **glass** and soap in the 19th century, the East Cambridge riverfront fell into disrepair after World War II, as businesses and manufacturing concerns began to move their enterprises to the suburbs.
(emphasis added)
"The Boston Globe," May 4, 1989

Finally, we take judicial notice of a gazetteer listing for Cambridge² which states, with reference to Cambridge, Massachusetts:

Cambridge has been an educational and cultural center since Harvard College was established in 1636. In 1639, Stephen Daye set up the first printing press in the Colonies here. Printing and publishing continue to be important, along with scientific and industrial research and diverse manufacturing. Harvard and the Massachusetts Institute of Technology (MIT, 1861) are the largest employers. The city is also the seat of Radcliffe and Lesley colleges and the Episcopal Divinity School, and headquarters for the Smithsonian Astrophysical Observatory. Important cultural institutions include Harvard's Peabody Museum (archaeology and ethnology) and the Carpenter Center for Visual Arts, the only building in the US designed by Le Corbusier. In the area around Harvard Square general synods of New England churches met in 1637 and 1647; George Washington assumed leadership of the Continental Army in 1775; and the first Revolutionary army camped. Technology Square and Kendall Square, near MIT, are centers for new high-tech and biotech businesses. East Cambridge, NE of the MIT area, is a commercial and working class residential area, traditionally Irish and Italian. Cambridgeport, the southernmost part of the city (along the Charles opposite Back Bay, Boston),

² The Board may take judicial notice of standard reference works. **Sprague Electric Co. v. Electrical Utilities Co.**, 209 USPQ 88 (TTAB 1980).

and North Cambridge are largely residential.

The Cambridge Gazetteer of the United States and Canada, © 1995.

We have quoted the latter reference work at length to show what is missing, namely, any mention of glass manufacturing in Cambridge, Massachusetts. The fact that glass is not listed in this gazetteer bearing a 1995 copyright date, combined with the statement in the 1989 "Boston Globe" article that East Cambridge was a major industrial center for the manufacture of glass in the 19th century, but that the area fell into disrepair after World War II as manufacturing concerns began to move their enterprises to the suburbs, indicates that Cambridge, Massachusetts is no longer an area in which glass is manufactured. Although we note that "glass" is listed in the Webster's Geographical Dictionary as one of the products manufactured in Cambridge, in light of the other evidence we can only conclude that the Webster's listing, which is obviously from a time earlier than the Cambridge Gazetteer and "Boston Globe" publications,³ does not reflect the current situation in Cambridge. In any event, we

³ We note, in this connection, that although the most recent copyright date of the Webster's dictionary is 1988, the copyright page indicates that its principal copyright date is 1972. Further, the population figures for the city are circa 1980. As noted above, the "Boston Globe" article was written in 1989, and the Cambridge gazetteer has a copyright date of 1995.

cannot find, based on what is at best contradictory evidence, that glass products are manufactured in Cambridge, Massachusetts, and that consumers would make a goods/place association between applicant's goods and that geographic place.

This brings us to the Examining Attorney's claim that consumers will make a goods/place association between applicant's identified goods and Cambridge, Ohio. The gazetteer listing for this city is as follows:

City, pop. 11,748, seat of Guernsey Co., EC Ohio, 24 mi/39km NE of Zanesville. It was founded in 1806 by immigrants from the island of Guernsey. Deposits of clay and natural gas in the vicinity have fostered its industrial growth. **The city is particularly known for its glass industry.** Other manufactures include furniture, pottery, steel, plastics, and clothing. Cambridge is also a trade center for the adjacent agricultural area. Salt Fork State Park is 5 mi/8km NE.
(emphasis added)
The Cambridge Gazetteer of the United States and Canada, © 1995.

In addition, the Examining Attorney has submitted articles taken from the NEXIS data base and various websites which show that glass produced by the Cambridge Glass Company have become collectors' items, and that there are clubs of Cambridge Glass collectors and books devoted to Cambridge Glass, including value guides. The following

entry on "Cambridge glass," from the Tuttle Dictionary of Antiques & Collectibles Terms, provides a summary:

Quality glass objects, from dinnerware to animals, produced by the Cambridge Glass Company from 1901 until 1958. Cambridge glass was clear until the 1920s, when color was introduced. Although the company used many marks through the years, the letter C in a triangle is the most common mark found on this popular ware.

The Examining Attorney has also shown that, in addition to being well-known as the site of the now-defunct Cambridge Glass Company, Cambridge Ohio is still home to glass manufacturing:

The town was a hub of glass manufacturing when Cambridge Glass Co., one of the largest glassmakers of its day, churned out decorative objects from 1902 to 1958.

In an old barn-turned-antique-shop just east of Cambridge on Route 22, owner Shirlee Bistor provides a brief history of the local glass industry by making a single circuit of the barn's dusty interior, where bottles and glasses and gewgaws are crowded onto every inch of flat surface.

"Cambridge was the first to color glass," she says....

There were others, of course.

"All along the river were these glass companies," Bistor continues. "But imports killed the glass factories."

Today, just two small enterprises, Mosser Glass and Boyd's Crystal Art Glass, operate in Cambridge. Both allow visitors a free peek at the manufacturing process and a chance to buy from the factory. In addition, two museums chronicle the industry's heyday. The Cambridge Glass Museum has 5,000 pieces on display...

Cambridge, population about 12,000, is thus far untouched by strip malls, but it does have three antiques malls. Not surprisingly, they're stocked with a wealth of regional glass and pottery. "Pittsburgh Post-Gazette," July 14, 1996

Based on the above evidence, we find that the Examining Attorney has established that Cambridge, Ohio is well-known for the manufacture of glass, and that, although its most famous glass manufacturing company has been closed for many years, glass manufacturing companies still operate in the city. Thus, consumers seeing the mark CAMBRIDGE on applicant's door lites made of glass are likely to believe, mistakenly, that the door lites, or at least the glass used in the door lites, come from Cambridge, Ohio.

We have considered, but are not persuaded by applicant's argument that the kind of glass for which Cambridge is known, art glass, is not the kind of glass product used in applicant's door lites. The gazetteer listing, and the article quoted above, do not indicate that the glass manufactured in Cambridge today is limited to

decorative glassware. Further, the identification of door lites can encompass colored glass⁴ or decorative glass such as etched glass.

Applicant also points out that its door lites are marketed to the building industry. We cannot ascertain, from the identification alone, whether door lites are the type of product which may be purchased by a homeowner at, for example, a hardware or housewares store, and the Examining Attorney has not provided any evidence that this would be the case. Therefore, we will assume that door lites are marketed and sold to builders, architects, home designers, contractors, interior designers and others in the home building industry, rather than the public at large. Even so, we must assume that such purchasers would be aware of the connection between Cambridge, Ohio and glass, especially in view of the description in the gazetteer that the "city is particularly known for its glass industry."

Finally, applicant has pointed out that its door lites include, in addition to inserts made of glass, inserts made of plastic. The fact that the Examining Attorney has not argued, or shown, that there is a goods/place association

⁴ The "Pittsburgh Post-Gazette" articles states that the Cambridge Glass Company was the first to produce colored glass.

between plastic inserts for doors and Cambridge, does not obviate the association with door lites made of glass. Applicant cannot register a mark which is geographically deceptively misdescriptive of some of its goods simply because it has included other goods in its identification for which the mark would not be geographically deceptively misdescriptive. As the Board said in **In re Analog Devices, Inc.**, 6 USPQ2d 1808 (TTAB 1988), aff'd. in a decision marked non-citable as precedent, 871 F.2d 1097, 10 USPQ2d 1879 (Fed. Cir. 1989), "it is a well settled legal principle that where a mark may be merely descriptive of one or more items of goods in an application but may be suggestive or even arbitrary as applied to other items, registration is properly refused if the subject matter for registration is descriptive of any of the goods for which registration is sought." We see no reason not to apply the same principle in the case of geographically deceptively misdescriptive marks.

Ser. No. 75/216,795

Decision: The refusal of registration is affirmed.

E. J. Seeherman

E. W. Hanak

G. F. Rogers
Administrative Trademark Judges
Trademark Trial and Appeal Board